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Attorneys for Central Oregon LandWatch

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION**

CENTRAL OREGON LANDWATCH, an
Oregon non-profit corporation,

Plaintiff,

v.

SHANE JEFFRIES, in his official capacity as
Ochoco National Forest Supervisor; GLENN
CASAMASSA¹, in his official capacity as
Regional Forester for Region 6; and UNITED
STATES FOREST SERVICE,

Federal Defendants,

and

OCHOCO TRAIL RIDERS, OREGON
MOTORCYCLE RIDERS ASSOCIATION,
PACIFIC NORTHWEST 4 WHEEL DRIVE
ASSOCIATION, DESCHUTES COUNTY 4
WHEELERS, and THE BLUERIBBON
COALITION,

Defendant-Intervenors

Case No. 2:17-cv-1004-SU (Lead Case)
Case No. 2:17-cv-1091-SU (Trailing Case)
Case No. 2:17-cv-1366-SU (Trailing Case)

**STIPULATED SETTLEMENT
AGREEMENT AND RELEASE**

¹ Substituted pursuant to FED R. CIV. P. 25(d) for James M. Peña.

WHEREAS Plaintiff Central Oregon LandWatch (Case No. 2:17-cv-1091-SU) alleged in the above-captioned case (“Lawsuit”) that the United States Forest Service, Shane Jeffries, in his capacity as the Ochoco National Forest Supervisor, and Glenn Casamassa, in his capacity as Regional Forester (collectively, “Federal Defendants”), violated the National Environmental Policy Act, the National Forest Management Act, and the Endangered Species Act (“ESA”).

WHEREAS, the District Court issued its Order on January 3, 2019, granting in part and denying in part the Parties’ cross-motions for summary judgment, ECF No. 104, and entered its Judgment on January 4, 2019, ECF No. 105.

WHEREAS, Plaintiff filed an Amended Motion for Award of Costs of Litigation, Fees, and Other Expenses on November 6, 2019, requesting an award of attorneys’ fees and costs under the Equal Access to Justice Act (“EAJA”) and the ESA.

WHEREAS, Federal Defendants opposed Plaintiff’s Amended Motion.

WHEREAS, the Magistrate Judge issued Findings & Recommendation (F&R) on August 7, 2020, recommending that Plaintiff be awarded attorneys’ fees in the amount of \$298,636.00 and costs in the amount of \$10,105.93, ECF No. 162.

WHEREAS, Plaintiff and Federal Defendants wish to avoid further litigation over Plaintiff’s alleged entitlement to attorneys’ fees and costs for this lawsuit.

NOW, THEREFORE, through their undersigned counsel, Plaintiff and Federal Defendants hereby enter into this Stipulated Settlement Agreement and Release (“the Agreement”), and stipulate and agree as follows:

1. Subject to Paragraph 3, the Parties agree to settle Plaintiff’s claims for attorneys’ fees and costs in this litigation for a total payment of three-hundred and eight thousand seven hundred forty one dollars and ninety-three cents (\$308,741.93), pursuant to EAJA, 28 U.S.C.

§ 2412 *et seq.*, the ESA, and/or any other statute, in full and complete satisfaction of any and all claims, demands, rights, and causes of action Plaintiff may have for the recovery of attorneys' fees and/or litigation expenses in this matter.

2. Plaintiff and Federal Defendants agree to vacatur of the F&R, and after payment has been received pursuant to Paragraph 3, will jointly request that the Court enter an order vacating the F&R, pursuant to Paragraph 5.

3. Federal Defendants' payment, as identified in Paragraph 1 above, shall be accomplished by electronic funds transfer to Crag Law Center's IOLTA account on behalf of Plaintiff. Counsel for Plaintiff will provide counsel for Federal Defendants the appropriate account number and other information needed to facilitate payment. Federal Defendants shall submit the necessary paperwork for the payment within thirty (30) calendar days after the later of the date that both parties' counsel have signed this agreement or Plaintiff's counsel provides the information necessary to facilitate payment. Counsel for Federal Defendants agrees to assist the Counsel for Plaintiff in following up with the appropriate office(s) if payment is not received within thirty (30) calendar days after the paperwork for processing of the payment has been submitted. Counsel for Plaintiff shall confirm payment within ten (10) calendar days of receipt.

4. The Crag Law Center acknowledges that it is receiving payment on behalf of Plaintiff and that it will distribute the appropriate settlement proceeds to Plaintiff. Plaintiff agrees to this procedure. Counsel for Plaintiff shall confirm payment within ten (10) days of receipt. Plaintiff also acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the award of attorneys' fees and costs Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

5. Within fifteen (15) calendar days after the Crag Law Center's receipt of the payment as described in Paragraphs 1 and 3 of this Agreement, the parties will file a joint stipulation requesting that the Court vacate the F&R.

6. Plaintiff and its counsel agree to hold harmless Federal Defendants in any litigation, further suit, or claim arising from the payment of the agreed upon \$308,741.93 settlement amount.

7. In acknowledgment of and in exchange for the promises and other consideration contained in this Agreement and after the payment by Federal Defendants to Plaintiff referenced in paragraphs 1 and 2 above, Plaintiff hereby releases Federal Defendants and all past, present, and future officers, agents, representatives, and employees of the United States Department of Agriculture of and from any and all claims and causes of action whatsoever that Plaintiff ever had, now has, or hereafter may have for attorneys' fees and costs related to the Lawsuit or to this Agreement.

8. This Agreement does not constitute, and shall not be construed as, an admission or concession on the part of any party with respect to any fact, claim, or defense in this action. Federal Defendants do not waive any defenses they may have concerning the claims settled under this Agreement. This Agreement has no precedential value and shall not be used as evidence of such in any litigation, except as necessary to enforce the terms of this Agreement.

9. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or requirement that Federal Defendants are obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

10. The Agreement contains all of the agreement between Plaintiff and Federal Defendants, and is intended to be the final and sole agreement between them. Plaintiff and

Federal Defendants agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

11. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of the Agreement and do hereby agree to the terms herein.

Respectfully submitted this 4th day of February 2021.

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division

/s/ Shaun M. Pettigrew

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